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BRIAN R. HINMAN, Tenant/Petitioner v. UNITED DOMINION MANAGEMENT COMPANY, Housing Provider/Respondent	Case No.: RH-TP-06-28728

FINAL ORDER

I. Introduction

On July 25, 2006, Tenant/Petitioner Brian R. Hinman filed Tenant Petition ("TP") 28,728 with the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs ("RACD") asserting that Respondent/Housing Provider United Dominion Management Company violated multiple provisions of the Rental Housing Act of 1985 (the "Act") with respect to Tenant's apartment at 907 6th Street, S.W. (the "Housing Accommodation").[1] On January 25, 2007, the parties appeared at a hearing. Tenant, Brian Hinman, testified on his own behalf. Nell Sowers, a community director, testified for Housing Provider. For reasons discussed below, I find that Tenant proved that Housing Provider implemented a rent ceiling adjustment that was not properly perfected. Therefore, Tenant is entitled to a rent refund for the amounts that were overcharged, interest, and a roll back of his

[1] On October 1, 2007, the RACD was transferred from the Department of Consumer and Regulatory Affairs to the Department of Housing and Community Development. The transfer does not affect the case here in any respect.

rent. Tenant's total award is $1,470.83 for rent refunds and interest. In addition, I direct that Tenant's rent be rolled back to $1,263 per month, as of February 2007.

II. Findings of Fact

At all times relevant to these proceedings Tenant Brian R. Hinman leased apartment No. 207 in the Housing Accommodation at 907 6th Street, S.W. In June 2006 he paid rent of $1,230 per month. Petitioner's Exhibit ("PX") 100.[2]

In a Notice of Increase in Rent Charged dated June 28, 2006, Housing Provider informed Tenant that his rent would be increased by $225 per month to $1,488 per month as of August 1, 2006. The notice attributed the rent increase to a $531 rent ceiling adjustment, effective on March 1, 2001, involving a vacancy increase under Section 213(a)(2) of the Act, D.C. Official Code § 42-3502.13(a)(2) (2005).[3] PX 100. The notice contained: (1) the amount of the rent adjustment ($225 per month); (2) the amount of the adjusted rent ($1,488 per month); (3) the date upon which the adjusted rent would be due (August 1, 2006); (4) the date and authorization for the rent ceiling adjustment (March 1, 2001); and (5) certification that the rental unit and

[2] A list of the exhibits offered and received in evidence is attached as an appendix to this Order.

[3] Rent ceilings were abolished by the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent ceilings would be based on the present rent charged for a housing unit rather than the rent ceiling. *See* 53 D.C. Reg. 4489 (Jun. 23, 2006). The amendment was effective as of August 5, 2006, and therefore does not affect the Tenant's petition here. *See* 53 D.C. Reg. 6688 (Aug. 18, 2006). The old Act allowed a Housing Provider to implement a portion of a rent ceiling increase as the basis of a rent increase. The Housing Provider could reserve the remainder of the rent ceiling increase for future use. D.C. Official Code § 42-3502.08(h)(2) (2005)

The old Act allowed a housing provider to increase the rent ceiling in an apartment that became vacant by the greater of either 12% of the existing rent ceiling or to the rent ceiling of a "substantially identical rental unit in the same housing accommodation." D.C. Official Code § 42-3502.13 (2005).

common elements of the housing accommodation were in substantial compliance with the Housing Regulations. PX 100.

The rent ceiling adjustment that Housing Provider implemented on August 1, 2006, was documented in an Amended Registration Form filed with the RACD on April 19, 2001. The Amended Registration recorded an increase in the rent ceiling for Tenant's apartment from $1079 to $1610, and listed the date of change as March 1, 2001. The form identified the rental unit to which the election applied (No. 207) and stated the amount of the adjustment and the prior and new rent ceilings for the unit. RX 200.

On July 25, 2006, Tenant filed this tenant petition with the RACD. The petition asserted the following complaints: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act; (2) a proper 30 day notice of rent increase was not provided before Tenant's rent increase became effective; (3) Housing Provider failed to file the proper rent increase forms with the RACD; (4) the rent being charged exceeds the legally calculated rent ceiling for the unit; and (5) the rent ceiling filed with the RACD for the unit is improper.

The rent increase effective on August 1, 2006, was the only rent increase he disputed. Housing Provider demanded and Tenant paid the increased rent through the date of the hearing.

III. Analysis

A. The Validity of the August 2006 Rent Increase

Tenant complained in the tenant petition of a rent increase that was larger than the amount allowed under the Rental Housing Act, that the rent charged exceeded the legally

calculated rent ceiling, and that the rent ceiling filed with the RACD was improper. All of these claims arose out of his challenge to the August 2006 rent increase, the only increase that Tenant elected to dispute. Although Tenant submitted a number of exhibits that did not relate to his apartment in order to demonstrate a "pattern and practice" by Housing Provider of late filing with the Rent Administrator, I conclude that evidence of any pattern is irrelevant to the issue of the legality of Tenant's rent increase or the appropriate penalty.

The rent increase that Housing Provider implemented in August 2006 was based on a rent ceiling increase arising out of a vacancy adjustment in 2001. PX 111, RX 200. The vacancy adjustment was documented by filing an Amended Registration Form on April 19, 2001. The Certificate stated the effective date of the adjustment to be March 1, 2001, 44 days prior. RX 200.

For an increase in rent ceiling to be valid the Housing Provider must comply with the Rental Housing Commission's rules for documenting and filing the increase. The regulations provide that:

> Except as provided in § 4204.10 [relating to adjustments of general applicability], any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by § 4103.1, and met the notice requirements of § 4101.6.

14 DCMR 4204.9.

The applicable registration requirement requires that a housing provider of a rental unit covered by the Act file an amendment to the Registration/Claim of Exemption form "[w]ithin

thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 of the Act." 14 DCMR 4103.1(e). The Rental Housing Commission has interpreted this regulation to require that the amended registration be filed within 30 days of when an apartment becomes vacant. *Sawyer Prop. Mgmt. v. Mitchell*, TP 24,991 (RHC Oct. 31, 2002) at 32-33, *aff'd, Sawyer Prop Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (2005); *Grant v. Gelman Mgmt. Co.*, TP-27,995 (RHC Feb. 24, 2006) at 26-27. The Amended Registration Form indicated that the vacancy was effective on March 1, 2001. It follows that the rent ceiling increase was not properly perfected because the Amended Registration was not filed until April 19, 2001, 44 days after the apartment became vacant. In turn, the August 1, 2006, rent increase of $225 per month, which purported to implement a portion of the 2001 rent ceiling adjustment, is invalid.

B. The Application of the Rental Housing Act's Statute of Limitations

In a post-hearing memorandum of law Housing Provider argues at length that the Rental Housing Act's three-year statute of limitations on challenges to rent adjustments, D.C. Official Code § 42-3502.06(e) bars Tenant from challenging Housing Provider's failure to perfect the 2001 rent ceiling adjustment. The issue is significant, so I will address Housing Provider's arguments in detail.

1. Housing Provider's Contentions

Housing Provider's position in support of a broad application of the statute of limitations may be summarized as follows:

(1) In *Kennedy v. D.C. Rental Hous. Comm'n,* 709 A.2d 94 (D.C. 1998), the Court of Appeals approved an interpretation by the Rental Housing Commission that the statute of limitations "bars any investigation of the validity of rent levels, or of adjustment in either the rent levels or rent ceilings, in place more than three years prior to the date of the filing of the tenant petition, and thus treats them as unchallengeable." 709 A.2d at 97. Moreover, *Kennedy* approved the legislative purpose of the statute of limitations enacted in 1985 to end the "administrative quagmire" created by the Court's earlier decision in *McCulloch v. D.C. Rental Hous. Comm'n*, 449 A.2d 1072 (D.C. 1982), which allowed tenants to challenge rent ceiling adjustments and rent adjustments going back indefinitely.

(2) The Court of Appeals' decision in *Kennedy* affirmed a long line of decisions by the Rental Housing Commission which held that a tenant was barred from challenging rent adjustments and rent ceiling adjustments that occurred more than three years before the tenant petition was filed. *E.g.*, *Williams v. Alvin L. Albinoe, Inc.*, TP 22,821 (RHC Aug. 12 1992); *Chin Kim v. Woodley*, TP 23,260 (RHC Sept. 13, 1994).

(3) In *Majerle Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 48 (D.C. 2004), the Court of Appeals approved its holding in *Kennedy* and, in a footnote, approved the holding of the Rental Housing Commission that an amended registration form filed more than 3 years before the tenant petition was barred from challenge.[4]

[4] The *Majerle* case came before the Court of Appeals twice. In Respondent's Memorandum of Law in Support of the Applicability of the Statute of Limitations, filed February 6, 2007,

(4) The *Kennedy* and *Majerle* decisions confirmed that the statute of limitations in the Rental Housing Act is a "non-claims statute" intended not merely to deprive Tenant of a remedy for time-barred claims, but to extinguish the right to recover as well as the right to a remedy. *Kennedy*, 709 A.2d at 99.

(5) Housing Provider contends that the Court of Appeals' decision in *Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (D.C. 2005), is not applicable here. Although *Sawyer* held that a rent ceiling adjustment that had not been properly perfected could not be implemented in a subsequent rent adjustment, *Sawyer* involved rent ceiling adjustments that were taken less than three years before the tenant petition was filed.

(6) The Rental Housing Commission's decisions in *Grant v. Gelman Mgmt. Co.*, TP 27,995 (RHC Feb. 24, 2006), which held that the statute of limitations did not bar a challenge to a rent ceiling adjustment taken more than three years before the tenant petition was filed, also is not applicable to the present case. According to Housing Provider, because the decision constituted a "marked departure" from previous Commission decisions, it cannot be applied retroactively to the Housing Provider's actions here. In addition, *Gelman's* judicial nullification of an act of the District of Columbia Council is an unconstitutional usurpation of legislative power by the agency.

2. The Rental Housing Act and Housing Regulations

Housing Provider cited the Court of Appeals' decision in *Majerle Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 777 A.2d 785 (D.C. 2001). But the quote Respondent attributed to that case actually came from a later decision, *Majerle Mgmt. Inc. v. D.C. Rental Hous. Comm'n,* 866 A.2d 41, 48 (D.C. 2004). Respondent then filed a supplemental memorandum of law on February 21, 2007, in which it quoted an additional passage from the 2004 decision in the belief that its earlier submission "did not reference the subsequent decision."

Taken out of context, there are passages in the *Kennedy* and *Majerle* opinions that seem to imply that the Rental Housing Act's statute of limitations bars a tenant from challenging any action by the housing provider that took place more than three years before the tenant petition was filed. But, as the Court of Appeals has noted, "our decisions must be read in the context of the facts presented in those cases." *Cafritz v. D.C. Rental Hous. Comm'n*, 615 A.2d 222, 228, n. 5 (D.C. 1992). In context, it is clear that neither the Rental Housing Commission nor the Court of Appeals interpreted the statute of limitations to bar challenges to timely rent adjustments that implemented improperly perfected rent ceiling adjustments, irrespective of whether the rent ceiling adjustment predated the limitation period.

The starting point for analysis is the Rental Housing Act itself. The Act provides:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

D.C. Official Code § 42-3502.06(e) (emphasis added).

The statute, on its face, makes no specific reference to rent ceiling adjustments, only to rent adjustments. If the statute is construed to apply to rent ceiling adjustments as well as to rent adjustments, it does not say what the "effective date" of the adjustment is.

The Rental Housing Commission's regulations add little to what is contained in the statute. The regulations provide that "a tenant petition filed under this section shall be filed within three (3) years of the effective date of the adjustment." 14 DCMR 4208.14. The

regulations do not specify whether the "adjustment" involved refers to rent ceiling adjustments as well as rent adjustments. Nor, if rent ceiling adjustments were meant to be included, do the regulations state whether the "effective date" is the date that a rent ceiling adjustment is filed or the date on which it is implemented through a rent adjustment.

3. Controlling Authority

To the extent that the governing statute and the implementing regulations are ambiguous, we must look to case law for precedent. The Office of Administrative Hearings is bound to follow the precedent of the Rental Housing Commission. Even the Court of Appeals has acknowledged that it owes "considerable deference to the RHC's interpretations of the statutes it administers and the regulations it promulgates." The Court is "obliged to sustain the RHC's interpretation of those statutes and regulations unless it is unreasonable or embodies 'a material misconception of the law,' even if a different interpretation may be sustainable." The Court may not reject the Commission's construction unless it is "plainly wrong or incompatible with the statutory purpose." *Sawyer*, 877 A.2d at 102-103 (quoting *Jerome Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 682 A.2d 178, 182 (D.C. 1996) and *Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 550 A.2d 51, 55 (D.C. 1988), other citations omitted).

4. The Court of Appeals' Decision in *Kennedy*

It was in this spirit of deference that the Court of Appeals approached its decision in the *Kennedy* case. *See* 709 A.2d at 97. The tenants in *Kennedy* sought to invalidate a rent ceiling adjustment that was taken eight years before the tenant petition was filed and was then superseded by layers of rent ceiling adjustments and rent increases that were not challenged. *Id.* at 95-96. The Rental Housing Commission held that the tenant's challenge to the rent ceiling

was barred by the statute of limitations, relying on legislative history which indicated that: "Provisions concerning the time for filing challenges to rent adjustments have been changed. Tenants must file any challenge to any type of rent adjustment within three years after the adjustment takes effect." *Id* at 97 (quoting *Chin Kim v. Woodley*, TP 23,260 (RHC Sept. 13, 1994) at 10 and Statement of Councilmember Jarvis re: Amendment in the Nature of a Substitute to Bill 6-33, at 11). The Commission concluded that:

> new rent ceilings by themselves are not an adjustment in rent; however, after the rent ceilings are implemented on a specific effective date, the three year statute of limitations in the Act begins to run. The statute of limitations in the Act placed a limitation on the tenants' right to recover, as well as the right to a remedy (refunds).

709 A.2d at 99.

It is clear that the decisions of both the Commission and the Court of Appeals in *Kennedy* did not, as Housing Provider contends, prohibit a tenant from challenging the *implementation* of a timely rent adjustment solely because it implemented an improperly perfected rent ceiling adjustment that was taken more than three years before the tenant petition was filed. Rather, *Kennedy* held that the statute was triggered only "after the rent ceilings are implemented on a specific effective date." That is the situation here, where the rent ceiling that Housing Provider purported to take, but did not perfect, in 2001 was implemented on August 1, 2006, within three years of when the tenant petition was filed.

5. The Commission's Decisions in *Gelman*

The Commission's interpretation of its governing statute and regulations were recently clarified in its Decision and Order and Order Denying Motion for Reconsideration in *Grant v. Gelman Mgmt. Co.*, TP 27,995 (RHC Feb. 24, 2006, Mar. 30, 2006). In *Gelman*, as in the case at bar, the tenants challenged rent adjustments that were taken less than three years before the tenant petition was filed. But the rent adjustments implemented rent ceiling adjustments that were taken, but not properly perfected, more than three years before the tenant petition was filed. *See Gelman,* Feb. 24, 2006, Decision and Order at 20-21. The Commission analyzed the Court of Appeals' decision in *Sawyer*, noting the Court's conclusion that a certificate of election of adjustment of general applicability or an amended registration that memorialized a vacancy rent ceiling adjustment was required to be filed with the Rent Administrator within 30 days, or "the housing provider forfeits the rent ceiling adjustment, and he cannot utilize the adjustment to increase the rent ceiling or rent." *Id.* at 25; *Sawyer,* 877 A.2d at 104, 109. The Commission then remanded the case to the hearing examiner for further findings and conclusions, with the admonition that:

> The Commission cautions the hearing examiner not to confuse the three year statute of limitations which the Act imposes on tenants, with the threshold requirement that the housing provider take and perfect rent ceiling adjustments within thirty days. Citing the Unitary Rent Ceiling Adjustment Act, the [Court of Appeals] stated the following with respect to the thirty day filing requirement:
>
> > The fact that subsection (h)(2) of the [Unitary Rent Ceiling Adjustment Act] allows a housing provider to delay *implementing* any rent ceiling adjustment in a rent increase without forfeiting the adjustment does not mean, as Sawyer contends, that the provider is free to delay *perfecting* its entitlement to the adjustment as well. The Unitary Act did not

> address the requirements for perfection, as opposed to implementation, of rent ceiling adjustments. The Act thus did not supersede or in any way affect the thirty day perfection requirement of D.C. Mun. Regulations. Tit 14 § 4204.10.

Gelman, Feb. 24, 2006, Decision and Order at 26 (quoting *Sawyer*, 877 A.2d at 107, emphasis added in the RHC Decision).

The housing provider in *Gelman* filed a motion for reconsideration. In its Order Denying Motion for Reconsideration the Commission reaffirmed its position and rejected the housing provider's contention that the statute of limitations barred any examination of rent ceiling adjustments taken more than three years before a tenant petition was filed. The Commission observed that the Court of Appeals had noted the importance of the Act's recording requirements in *Charles E. Smith Mgmt. Co. v. D.C. Rental Hous. Comm'n,* 492 A.2d 875, 878 (D.C. 1985), and that the Court, in *Sawyer*, emphasized the importance of those requirements to "confirm that any rent increase is based on a rent ceiling adjustment that is authorized and available for implementation." *Gelman*, Mar. 30, 2006, Order on Mot. For Recons. at 6 (quoting *Sawyer,* 877 A.2d at 204). The Commission then analyzed the Court's opinions in *Kennedy* and *Majerle* noting that both cases construed the statute of limitations to apply to rent levels rather than to rent ceiling adjustments. *Id.* at 7-8. The Commission explained that a construction of the Act that prohibited a tenant from challenging rent increases based on unperfected rent ceiling adjustments that were taken more than three years before the petition was filed would evade the purpose of the Act. It would enable a housing provider to "avoid the Act's requirement of implementing 'authorized' rent ceiling adjustments pursuant to the Unitary Rent Ceiling Adjustment Act, the requirements of perfection found in the regulations, and the court's holding in Sawyer." *Id.* at 10. The Commission concluded that: "If the housing provider attempts to

justify a rent increase using a rent ceiling adjustment that was not perfected, the rent increase cannot stand. *It matters not if the rent ceiling adjustment was filed within three years or thirty years of the effective date of the rent increase.*" *Id.* at 11 (emphasis added).

As the Commission noted in *Gelman*, earlier Commission decisions that applied the Act's statute of limitations to bar challenges to rent ceiling adjustments are distinguishable on their facts. The precedents involved situations in which the rent ceiling adjustments had been implemented in prior rent increases more than three years before the tenant petition was filed, or had formed the foundation for later rent ceiling increases that were properly perfected. *See, e.g.*, *Chin Kim v. Woodley*, TP 23,260 (RHC Sept. 13, 1994) at 2 (rent increase six years before tenant petition filed); *Williams v. Alvin L. Aubinoe, Inc.*, TP 22,821 (RHC Aug. 12, 1992) at 4 (rent increases four and five years before tenant petition filed); *Borger Mgmt., Inc. v. Warren*, TP 23,909 (RHC June 3, 1999) at 6 (services and facilities claims arising more than three years before tenant petition was filed); *Kennedy*, 709 A.2d at 95 (challenge to eight year old rent ceiling adjustment on grounds that it "resulted in incorrect and unlawful rent ceiling for all subsequent years"). These precedents did not involve a single rent ceiling adjustment, implemented within the last three years that could easily be scrutinized by the trier of fact. Instead, they challenged adjustments that rested beneath layers of later rent ceiling adjustments and rent adjustments, creating the "quagmire" that the statute of limitations was meant to address.

6. The Applicability of the Statute of Limitations

The Rental Housing Commission's decision in *Gelman* is substantively indistinguishable and controlling here. Contrary to Housing Provider's contention, the Commission's holding in

Gelman is not limited to prospective application. An administrative agency may be required to limit a decision to prospective application where it announces "a change in policy direction." *Tenants of 1709 Capitol Ave., N.E. v. 17th & L St. Props.*, HP 20,328 (RHC Dec. 15, 1987) at 10. But the requirement is not applicable where the law is "unsettled" and the decision "does not change an established rule on which a party has reasonably relied." *Reichley v. D.C. Dep't of Employment Svcs.*, 531 A.2d 244, 249 (D.C. 1987); *see also*, *Tenants of 2301 E St., N.W. v. D.C. Rental Hous. Comm'n,* 580 A.2d 622, 627 (D.C. 1990) (rule that did not constitute an "unexpected departure from prior law" would be applied retroactively).

Similarly, the Commission's decision in *Gelman* does not raise any constitutional issues. The decision does not usurp the power of the District of Columbia Council. It implements an act of the Council in a manner that is consistent with the plain language and intent of the Act.

The rental housing regulations require that a housing provider "shall take and perfect a rent ceiling adjustment" by filing the appropriate certificate or amended registration form "within thirty (30) days following the date when housing provider is first eligible to take the adjustment." 14 DCMR 4204.10; 14 DCMR 4205.7. In *Gelman*, the Rental Housing Commission did not depart from well-established precedent. It merely applied the regulation in accord with principles that had been enunciated in *Kennedy, Majerle, and Sawyer.*[5]

[5] Housing Provider's memorandum cited *Mendes v. Johnson*, 389 A.2d 781 (D.C. 1978) (*en banc*) for the proposition that the Commission's decision in *Gelman* should be given prospective application. *Mendes* applied an "equitable balancing" test to determine whether a new rule of law announced in an eviction proceeding in the Superior Court of the District of Columbia should be applied prospectively only. This holding was explicitly overruled by the Court of Appeals in *Davis v. Moore*, 772 A.2d 204, 209 (D.C. 2001) (*en banc*), which also held that the new rule of law did not violate either the Due Process Clause or the *Ex Post Facto* Clause of the Constitution. *Id.*

The Rental Housing Commission has clearly explained that the Rental Housing Act's statute of limitations does not bar timely challenges to a rent adjustment that implements an improperly perfected rent ceiling adjustment, irrespective of when the rent ceiling adjustment occurred. The Commission's holding is consistent with the governing statute, its own rules, and the prior decisions of the Commission and the Court of Appeals. Accordingly, I hold that Tenant's claim here is not barred by the Act's statute of limitations.

C. Tenant's Other Claims

Because Tenant established that the August 2006 rent increase implemented a rent ceiling adjustment that was improperly perfected, Tenant has proven three of the claims in the tenant petition — that the rent increase was larger than the amount allowed under the Act, that the rent exceeded the legal rent ceiling,[6] and that the rent ceiling filed with the RACD was improper. Tenant's two other claims relate to the form of Housing Provider's notice. The tenant petition asserted that Housing Provider did not provide a proper 30 day notice of the rent increase and Housing Provider failed to file the proper forms with the RACD. I find that Tenant has not sustained his burden of proof on these two issues.

Housing Provider's Notice of Increase in Rent Charged contained all the information required by the Act and the Housing Regulations. The notice included (1) the amount of the rent adjustment; (2) the amount of the adjusted rent; (3) the date upon which the adjusted rent would be due; (4) the date and authorization for the rent ceiling adjustment; and (5) certification that the rental unit and common elements of the housing accommodation were in substantial compliance

[6] The Notice of Increase in Rent Charged dated June 28, 2006 stated that Tenant's new rent ceiling was $1,687, which included the improperly perfected 2001 rent ceiling adjustment of $531. PX 100. Housing Provider's manager, Ms. Sowers, testified that the rent ceiling actually should have been $1,610. *See* RX 200. Thus, the proper rent ceiling was $1,079.

with the Housing Regulations. PX 100; D.C. Official Code § 42-3502.08(f); 14 DCMR 4205.4(a)(b). The notice is dated June 28, 2006, more than 30 days prior to the date of the rent increase. Tenant did not contend that he failed to receive the notice in timely fashion. The fault with the August 2006 rent increase was not one of form, but of substance. It implemented a rent ceiling adjustment that was improper. Tenant has not proven any deficiency in the form of the notice.

Similarly, Tenant has not proven that Housing Provider failed to file the proper rent increase forms with the RACD. Housing Provider filed an Amended Registration Form to document the rent ceiling increase arising from the March 1, 2001, vacancy. The form identified the rental unit to which the election applied (No. 207) and stated the amount of the adjustment and the prior and new rent ceilings for the unit. RX 200; 14 DCMR 4204.10. Although the form was not timely filed, Tenant has shown no defect in the form itself.

Tenant's failure to prove these two claims is inconsequential here. Because I find that the August 2006 rent increase is invalid, the propriety of Housing Provider's notice and forms is immaterial.

D. Tenant's Award

If a housing provider fails to take and perfect a rent ceiling adjustment properly, a subsequent rent increase resulting from that adjustment is invalid and must be refunded to the tenant through the date of the hearing. *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 46. Tenant paid the invalid $225 per month rent increase from August 1, 2006,

through the month of the hearing, January 2007, six months, for a total of $1,350.[7] Accordingly, I award Tenant a rent refund of $1,350.

In addition, the Rental Housing Act provides for a roll back of illegal rent increases. D.C. Official Code § 42-3509.01(a); *Sawyer v. Mitchell* at 2, 23 (affirming roll back imposed by hearing examiner); *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 48. Accordingly, I direct a roll back of Tenant's rent to $1,263 per month, the amount Tenant paid before the illegal rent increase, effective as of the month following the hearing, February 2007.

Tenant offered exhibits of other rent ceiling adjustments that were improperly perfected to demonstrate a "pattern and practice" of non-compliance with the filing requirements of the Act and the accompanying regulations. PX 107, 108, 109, 110. While these exhibits may evidence poor management and recordkeeping by Housing Provider, they do not demonstrate the culpable motive or intentional violation of law that is required to support an award of treble damages for bad faith violations under the Act. *See* D.C. Official Code § 41-3509.01(a); *Vicente v. Jackson*, TP 27,614 (RHC Sept. 19, 2005) at 12 (a finding of bad faith to justify treble damages requires "egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty," citing *Quality Mgmt. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986) and *Third Jones Corp. v. Young,* TP 20,300 (RHC Mar. 22, 1990)). For similar reasons, I find that Tenant has not proved any "willful" violation that would justify imposition of a fine under the

[7] Although it was undisputed that Tenant paid the rent increase that Housing Provider demanded, it is the Housing Provider's demand, rather than Tenant's payment, that controls the award of refunds. D.C. Official Code § 42-3501.03(28); 14 DCMR 4217.1; *Kapusta v. D.C. Rental Hous. Comm.*, 704 A.2d 286, 287 (D.C. 1997). Tenant's award is not prorated through the date of the hearing because the entire rent was due at the beginning of the month. *See* PX 100. It is fair to infer that the rent increase had been demanded for the entire month of January 2007. Housing Provider did not adduce any evidence to the contrary at the hearing.

Act. D.C. Official Code § 42-3509.01(b); *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005) (holding that a fine may be imposed where the housing provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act"); *Quality Mgmt.*, 505 A.2d at 76 ("willfully" implies intent to violate the law and a culpable mental state). In the absence of any evidence of bad faith or willfulness, I will not award treble damages or impose any fine.

E. Interest

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Schedule A, below, computes the interest due on each month's overcharge at the six percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of the hearing.

Interest Chart
TP 28,728
Date of Violation August 1, 2006, through
Date of OAH Decision October 5, 2007

A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (CxD)	Interest Due (BxE)
Aug. 2006	$225	14.16[8]	.005[9]	.0708	$15.93
Sept. 2006	$225	13.16	.005	.0658	$14.81
Oct. 2006	$225	12.16	.005	.0608	$13.68
Nov. 2006	$225	11.16	.005	.0558	$12.56
Dec. 2006	$225	10.16	.005	.0508	$11.43
Jan. 2007	$225	9.16	.005	.0458	$10.31
Feb. 2007	$225	8.16	.005	.0408	$9.18
Mar. 2007	$225	7.16	.005	.0358	$8.06
Apr. 2007	$225	6.16	.005	.0308	$6.93
May 2007	$225	5.16	.005	.0258	$5.81
June 2007	$225	4.16	.005	.0208	$4.68
July 2007	$225	3.16	.005	.0158	$3.56
Aug. 2007	$225	2.16	.005	.0108	$2.43
Sept. 2007	$225	1.16	.005	.0058	$1.31
Oct. 2007	$225	.16	.005	.0008	$.18
Total	$3,375.00				$120.83

Tenant's total award is $1,470.83, the sum of the rent refund, $1,350, and interest of $120.83.

[8] The months that the overcharge was held by Housing Provider is computed beginning in August 2006, the month of Tenant's rent increase, through the date of this decision, October 5, 2007. The portion attributable to October 2007 is prorated, 5/31 = .16

[9] The monthly interest rate is the 6% annual interest rate on judgments of the Superior Court of the District of Columbia on the date of the hearing, January 25, 2007, divided by 12, or .005.

IV. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (the "Act"), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings ("OAH") has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1)

Housing Provider's August 2006 rent increase implemented a rent ceiling increase that was not properly taken and perfected by Housing Provider. Accordingly, the increase is invalid and disallowed. *Sawyer Prop. Mgmt. v. Mitchell*, TP 24,991 (RHC Oct. 31, 2002) at 32-33, *aff'd, Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (2005); *Grant v. Gelman Mgmt. Co.*, TP-27,995 (RHC Feb. 24, 2006) at 26-27.

Tenant's challenge to a rent adjustment that was taken less than three years before the tenant petition was filed, implementing a rent ceiling adjustment that was taken more than three years before the petition was filed, but not properly perfected, is not barred under the Rental Housing Act's three-year statute of limitations D.C. Official Code § 42-3502.06(e); *Grant v. Gelman Mgmt. Co.*, TP-27,995 (RHC Feb. 24, 2006) at 26.

Tenant has not proven that Housing Provider failed to provide Tenant with a proper 30 day notice of rent increase before the increase became effective or that Housing Provider failed to file the proper rent increase forms with the RACD.

Tenant has not adduced evidence of culpable misconduct or intentional violation of law sufficient to demonstrate bad faith or a willful violation by Housing Provider. D.C. Official Code § 42-3509.01(a); (b).

Tenant is entitled to a roll back of his rent to the level it was at prior to August 1, 2006, when Housing Provider implemented the improper rent increase. The roll back is effective as of the date of the hearing. D.C. Official Code § 42-3509.01(a).

Tenant is entitled to interest on the amount Housing Provider demanded in excess of the permissible rent through the date of this decision. 14 DCMR 3826.1 – 3826.3.

V. Order

Accordingly, it is this **5th** day of **October, 2007,**

ORDERED that Housing Provider United Dominion Management Company pay Tenant, Brian R. Hinman, **ONE THOUSAND, FOUR HUNDRED AND SEVENTY DOLLARS AND EIGHTY-THREE CENTS ($1,470.83)**; and it is further

ORDERED that Tenant's rent is rolled back to **ONE THOUSAND TWO HUNDRED AND SIXTY-THREE DOLLARS** per month as of February, 2007; and it is further

ORDERED that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937.1, 1 DCMR 2937.1; and it is further

ORDERED that the appeal rights of any party aggrieved by this Final Order are stated below.

October 5, 2007

/s/_____
Nicholas H. Cobbs
Administrative Law Judge

APPENDIX

Exhibits in Evidence

Exhibit No.	Description
PX 100	Notice of Increase in Rent Charged dated August 1, 2006
PX 101	Letter dated June 27, 2006, from United Dominion Realty to Residents
PX 105	Tenant Notice of Increase of General Applicability dated December 8, 2005
PX 107	Certificate of Election of Adjustment of General Applicability dated June 27, 2002
PX 108	Certificate of Election of Adjustment of General Applicability dated April 29, 2003
PX 109	Certificate of Election of Adjustment of General Applicability dated August 29, 2006
PX 110	Certificate of Election of Adjustment of General Applicability dated October 24, 2003
PX 111	Certificate of Election of Adjustment of General Applicability dated December 2, 2006
RX 200	Amended Registration Form filed April 19, 2001